

**FILED**

**United States Court of Appeals  
Tenth Circuit**

**UNITED STATES COURT OF APPEALS**

**FOR THE TENTH CIRCUIT**

**October 10, 2014**

**Elisabeth A. Shumaker  
Clerk of Court**

HOME DEPOT USA, INC.,

Petitioner,

v.

JONATHAN NIEBERDING;  
FREDERICK ALOYSIUS NIEBERDING,

Respondents.

No. 14-604  
(D.C. No. 2:12-CV-02353-DDC-TJJ)

BARRETTE OUTDOOR LIVING, INC.,

Petitioner,

v.

JONATHAN NIEBERDING;  
FREDERICK ALOYSIUS NIEBERDING,

Respondents.

No. 14-605  
(D.C. No. 2:12-CV-02353-DDC-TJJ)

**ORDER**

Before **KELLY, LUCERO**, and **MCHUGH**, Circuit Judges.

These matters are before the court on separate Petitions for Permission to Appeal.

*See* Fed. R. App. P. 5(a); Fed. R. Civ. P. 23(f). We also have separate responses to each

petition, and both Home Depot and Barrette Outdoor Living have filed motions to submit replies in support. *See* 10th Cir. R. 5.1. We grant the motions to file replies in support of the petitions. Those replies shall be shown filed as of the date of this order.

Upon consideration, we also grant both petitions. Within 14 days of the date of this order, both Home Depot and Barrette Outdoor Living shall pay the \$505 filing and docketing fee to the Clerk of the District Court for the District of Kansas. *See* Fed. R. App. P. 5(d)(1)(A). The date of this order shall serve at the date of the notice of appeal in both cases, and each petition will result in an appeal in this court. *Id.* at 5(d)(2).

The clerk of this court is directed to open new appeals once the clerk of the district court notifies this court that the filing fees have been paid. *Id.* at 5(d)(3). The parties will be advised on how to proceed in separate directives issued in the two new matters. The appeals will be companioned, and the cases will be submitted and considered together.

Judge Lucero dissents, and would deny both petitions.

Entered for the Court

A handwritten signature in cursive script, reading "Elisabeth A. Shumaker", followed by a horizontal flourish.

ELISABETH A. SHUMAKER, Clerk